



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,298	06/23/2006	Hiroyuki Ichiyama	2006_0997A	9025
513 7590 08/05/2010 WENDEROTH, LIND & PONACK, L.L.P. 1030 15th Street, N.W., Suite 400 East Washington, DC 20005-1503				
EXAMINER				
PADEN, CAROLYN A				
ART UNIT		PAPER NUMBER		
1781				
NOTIFICATION DATE		DELIVERY MODE		
08/05/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ddalecki@wenderoth.com  
coa@wenderoth.com

### Office Action Summary

**Application No.**

10/584,298

**Applicant(s)**

ICHIYAMA ET AL.

**Examiner**

Carolyn A. Paden

**Art Unit**

1781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 June 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-5, 7 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bundus (3,488,198) as further evidenced by Potter (page 347) and Swern for reasons of record.

Bundus discloses filled milk. In example 1 the filled milk is made from skim milk, coconut oil and emulsifier. In this case the nonfat milk solids come from skim milk and Potter is relied upon to show the nonfat milk solids from milk. First a mixture is made of the ingredients. Then the product is pasteurized by heating the mixture to 150F for 30 minutes. Finally the pasteurized mixture is homogenized (column 2, example 1). The emulsifier used in Myverol 18-07, which is described in column 1, lines 58-60 to include glycerol monostearate and glyceryl distearate and be free from unsaturated fatty acids. The mixing of the ingredients in example 1 is seen to be the pre-emulsifying step. One of ordinary skill in the art would be able to calculate the extent of nonfat milk solids from the information provided by Potter and Bundus. The ratio of nonfat milk solids to fat would

be expected to fall within the range of the claims because the fat content of the milk is so low. The non-milk fat in this case is coconut oil. Swern (page 315) is relied upon to show the fat composition of coconut oil as having the fatty acid composition required in the claims. The claims appear to differ from Bundus as further evidenced by Potter and Swern in the recitation that the emulsion is oil in water emulsion. One of ordinary skill in the art would expect the emulsion of Bundus to be oil in water emulsion because the fat content of the emulsion is so low. It is appreciated that the use of the product for blending or into a pudding is not mentioned but milk products are known in the art to be used in cooking for the preparation of other foods like pudding. The preparation of these foods would be expected to involve blending. It would have been obvious to one of ordinary skill in the art to expect the emulsion of Bundus to be oil in water emulsion that could be used for blending into other ingredients for pudding preparation or to make bavarois or jelly.

One would expect the process of Bundus to be useful for light exposing food because the process follows the same steps as that of the claims.

Applicant argues that he has unexpected results in providing prevention of photodegradation. But applicant has not compared his process with that of Bundus.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 5, 7 and 9 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bundus (3,488,198) as further evidenced by Potter (page 127) and Swern for reasons of record.

Bundus discloses filled milk. In example 1 the filled milk is made from skim milk, coconut oil and emulsifier. In this case the nonfat milk solids come from skim milk and Potter is relied upon to show the nonfat milk solids from milk. First a mixture is made of the ingredients. Then the product is pasteurized by heating the mixture to 150F for 30 minutes. Finally the pasteurized mixture is homogenized (column 2, example 1). The emulsifier used in Myverol 18-07, which is described in column 1, lines

58-60 to include glycerol monostearate and glyceryl distearate and be free from unsaturated fatty acids. The mixing of the ingredients in example 1 is seen to be the pre-emulsifying step. One of ordinary skill in the art would be able to calculate the extent of nonfat milk solids from the information provided by Potter and Bundus. The ratio of nonfat milk solids to fat would be expected to fall within the range of the claims because the fat content of the milk is so low. The non-milk fat in this case is coconut oil. Swern (page 315) is relied upon to show the fat composition of coconut oil as having the fatty acid composition required in the claims. The claims appear to differ from Bundus as further evidenced by Potter and Swern in the recitation that the emulsion is oil in water emulsion. One of ordinary skill in the art would expect the emulsion of Bundus to be oil in water emulsion because the fat content of the emulsion is so low.

One would expect the process of Bundus to be useful for light exposing food because the process follows the same steps as that of the claims.

Applicant argues that he has unexpected results in providing prevention of photodegradation. A showing of unexpected result has no bearing on a rejection based upon 35 USC 102.

Claims 2, 6 and 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bundus as further evidenced by Swern and Potter as applied to claims 1, 3-5, 7, 9 and 10 above, and further in view of Arcadipane (5,393,551).

The claims appear to differ from Bundus in the recitation of the inclusion of tocopherol. Tocopherol is well known in the art as a vitamin and as an antioxidant. If further evidence for the inclusion of tocopherol in foods were required, one of ordinary skill in the art would only need to look to Arcadipane at Table 1, on column 10 wherein it shows fortification of milk with vitamin E or tocopherol. It would have been obvious to fortify the fat blend of Bundus to upgrade its nutritional quality.

Applicants' arguments are based on the rejection of the independent claims and so no additional arguments need to be addressed for this rejection.

The rejection of the claims based on Rek have been withdrawn in response to applicants' amendments to the claims.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE**

**FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-



1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1781

Application/Control Number: 10/584,298  
Art Unit: 1781

Page 9